

### **REMARKS/ARGUMENTS**

Claims 1-29, 34, 35 and 41-57 are pending herein, claims 1 and 53 being independent. No amendment is made herein.

In the pending Office Action, the Examiner rejected all claims under 35 U.S.C. § 103(a) as obvious over United States Patent No. 3,581,072 (Nymeyer) in view of United States Patent No. 6,230,146 (Alaia, *et al.*). The applicant has carefully considered the Examiner's rejection, and the reasons given in support thereof, but respectfully disagrees with the Examiner's analysis and conclusions. It is respectfully submitted that the claims are allowable over the references applied by the Examiner.

The following summary is based on the specification. It is provided only for the convenience of the Examiner as part of the discussion presented herein, and is not intended to argue limitations which are unclaimed.

The invention is directed to a method and apparatus for conducting an auction in which the auction is set to end at a predetermined time. In such prior art bidding systems, *e.g.* e-Bay, bidding is often suppressed by bidders who wait until the last minute to place a bid, thereby resulting in a last minute flurry of bidding. This practice tends to keep the ultimate price lower than might be the case if a person who placed an earlier bid had more of an opportunity to beat a later-placed bid. While this situation is favored by some potential buyers who have perfected the art of "sniping" bids, sellers would prefer to have higher prices. To encourage earlier, and higher, bidding, the invention provides for designating one of the bidders as an "auction leader". This designation is determined as a function of the designated bidder having placed the highest bid and maintaining the highest bid for the longest period of time. In this fashion, a bidder who, in one hypothetical example, places the first (and only) bid is designated as the auction leader if no one else bids until one minute prior to the scheduled termination of the auction. In other

words, if a second (or third) bidder attempts to “snipe” the bid by placing a marginally higher bid just moments before the scheduled close of the auction, the earlier bidder would still be the “auction leader” and would not be deprived of the opportunity to answer the bid placed by the late comer.

According to the invention, the auction leader is given the opportunity to outbid the “sniper” after the scheduled close of the auction. No one else is permitted to bid after the scheduled close, just the auction leader. There is thus an incentive to be named as auction leader, to be afforded this exclusive additional opportunity to bid and secure the item. This feature is nowhere found in the prior art. The ability to place a post-auction bid is specifically recited in the claims as “permitting said auction leader to make a further bid after said auction is closed”.

Nymeyer has been discussed in response to the prior Office Actions, and it has been pointed out that Nymeyer fails to teach or suggest the claimed ability to make a post-closing bid. Nymeyer teaches an auction market computation system for matching orders and prices for fungible goods, such as shares of stocks. The described system matches bids for items, and orders bids so that the seller sells the most products at the highest total price. Buyers may win items at a price lower than the highest offered price, so long as not all items have yet been sold at a higher price. There is no naming of an auction leader who gets the opportunity to bid after the scheduled close of the auction. The highest bidder in the Nymeyer system is guaranteed to get the items he or she wants, no matter how long he or she had the highest bid, although lower bidders may also get the opportunity to purchase items at lower prices, since the system is designed to maximize the amount realized by the sale of *multiple* fungible items. This system does not contemplate the problem addressed by the instant invention, *viz.*, the avoidance of an “auction leader” being shut out by a last minute bid, since the Nymeyer system only contemplates a system for handling the auction of multiple fungible items.


The Examiner, in the pending Office Action, has acknowledged this shortcoming in Nymeyer, and has newly applied Alaia, *et al.* to attempt to overcome this deficiency. The combination of Nymeyer and Alaia, *et al.*, however, does not fairly teach or suggest the claimed invention, as Alaia, *et al.* do not teach the above-described feature of the invention.

Alaia, *et al.* teach a method and system for controlling the closing time of multiple electronic auctions featuring multiple lots. It expressly teaches the extension of the closing time of one auction where another auction has been extended, thereby causing a logjam in closing times, and possibly impairing a bidder's opportunity to participate in more than one auction. It expressly teaches that the extension applies to "all bidders" (*see*, Abstract, lines 15-17: "This allows the possibility for a lot to be return[ed] to open status for further bidding by *all bidders*." – emphasis supplied). There is no naming of an auction leader, and no extension of bidding for the *auction leader only*.

For all these reasons, therefore, the instant invention is neither taught nor suggested by the references applied by the Examiner either taken alone or in combination. Early and favorable action is therefore respectfully solicited.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,  
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